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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DISRUPTIVE TECH LTD,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

JENNA JACOBSON et al.,

Real Parties in Interest.

B269687

(Los Angeles County
Super. Ct. No. LC101723)

ORIGINAL PROCEEDINGS in mandate. Russell S. Kussman, Judge. Petition granted.

Case Knowlson and J. Patrick Fleming, Jr., for Petitioner.

No appearance for Respondent.

Needham Law Firm and Carlos E. Needham for Real Parties in Interest.

Disruptive Tech LTD has petitioned for a writ of mandate to compel the trial court to vacate its order denying petitioner's motion to quash service of the summons for lack of personal jurisdiction and to enter an order granting the motion. Petitioner argues that the trial court used an incorrect standard in ruling on the motion, and that its finding of personal jurisdiction is not supported by substantial evidence. We grant the petition.

FACTUAL AND PROCEDURAL SUMMARY

Real parties in interest Jenna Jacobson, Brooks Martin, John Kotch, and Patrick Kearney were employed by Xen. Inc., a technology startup company formed in April 2010 for the purpose of developing a software referred to as "Xen technology."¹ Both Xen Inc. and its predecessor eSeekers (California) (hereafter, eSeekers (CA))² were owned by eSeekers Limited, a technology and investment company based in England (hereafter, eSeekers (UK)). Xen Inc. initially was funded with loans from eSeekers (UK).

Nigel Robertson had been a shareholder in eSeekers (UK) from its inception and served as one of its directors. Robertson had an ownership interest in Xen Inc. through eSeekers (UK) and was a director of Xen Inc. He was the person to whom Martin, Xen's chief operating officer, reported.

Petitioner is a Gibraltar holding company, which invests in technology startup companies. It was formed as Xen Limited in August 2011 and was renamed in 2013. Robertson was one of its directors. In October 2011, petitioner and eSeekers (UK) entered into a memorandum of understanding, in which they agreed to manage petitioner's interests in three other companies and eSeekers (UK)'s interest in Xen Inc. to

¹ Xen technology was intended to "recode the web" to deliver "highly personalized content and products" to consumers based on their interests.

² In addition to software development, eSeekers (CA) also had provided services and had entered into a collaboration and licensing agreement with another company, ShareNow, Inc. (hereafter, ShareNow), which eventually sued.

their mutual advantage and to share the net profits from the exploitation of those interests. Prior approval by the boards of both companies was required for acquiring or disposing of subsidiaries. The companies agreed to combine their interests in a single corporate structure “as soon as reasonably practicable.”

After entering into the memorandum of understanding, petitioner loaned over \$9 million to Xen Inc. It planned to buy the earlier loans by eSeekers (UK), and to call in its own loans for an assignment of Xen Inc.’s intellectual property assets. The loans to Xen Inc. were funded through investments in petitioner, and the funds were transferred electronically into Xen Inc.’s bank account at RBS Citizens bank. The loans were “convertible”—unsecured and interest free, but subject to the expectation that petitioner would have ownership of the technology developed by Xen Inc., pursuant to the memorandum of understanding with eSeekers (UK). Xen Inc. never generated revenue.

Alan Turner was an officer of Xen Inc. and a director of petitioner. Turner had been involved in forming eSeekers (UK) in 2006, but had resigned from it in 2011; he was then retained by petitioner “with responsibility for” Xen Inc. In November 2013, Turner sent a notice to Xen Inc. employees, on petitioner’s letterhead and “on behalf of” petitioner, that eSeekers (UK) “under direction from [petitioner], its parent and the ultimate owner of 100% of Xen Inc.” was “in the process of terminating all employment contracts” with Xen Inc. He followed that announcement with the caveat that the wording in the notice was his and the notice, “for the most part, was personal.” In the same notice, Turner explained Xen Inc. was not in a position to pay its creditors in full and advised that it was “seeking to make voluntary arrangements with everyone.”

At a bankruptcy examination, where he was asked to explain why petitioner directed the termination of Xen Inc. employees “as opposed to the board of directors of Xen [Inc.] or eSeekers [(UK)],” Turner responded: “They’re one—what you’re looking at here is a series of decisions made in—in consultation between eSeekers [(UK)] and [petitioner],” more specifically between Robertson on behalf of eSeekers (UK) and Darren Edward LeFeuvre, another of petitioner’s directors, on behalf of petitioner. Turner explained that petitioner had sought “to find a way of stopping the spin until we

had an investor in place that could refinance what was going on.” He clarified that the decision made on petitioner’s side was that if eSeekers (UK) did not “do something to stop the spin here, we’re not going to provide the line of credit.” Turner characterized his wording in the notice as “sloppy” but not necessarily false because of petitioner’s expectation under the memorandum of understanding that there would be “some form of common corporate structure” for petitioner and eSeekers (UK) and that petitioner would acquire Xen Inc. According to Turner, “[e]verything was operating as if that were going to be the case.”

In 2014, real parties sued Xen Inc. for unpaid wages, overtime, vacation time, and meal and rest breaks. They asserted claims for breach of contract; bad faith; quantum meruit; and unfair business practices. Robertson was named as an additional defendant, as were several other entities, including petitioner. The complaint alleged that all named entities were Robertson’s alter egos.

After Xen Inc. stopped doing business, some of its former employees were hired to work on an exploratory project for petitioner through its sub-subsidiary, Interest Labs, Inc. Interest Labs, Inc. did not become operational for lack of investment.

Xen Inc. defended pending litigation using loans from eSeekers (UK) and petitioner, and eSeekers (UK) attempted to settle the case by ShareNow, a licensee of eSeekers (CA). Petitioner made efforts to raise funds for Xen Inc. and eSeekers (UK) with the intent to consummate the restructuring envisioned in the memorandum of understanding. This effort continued until March 2015, when Xen Inc. and eSeekers (CA) filed for bankruptcy. The decision to file for bankruptcy came shortly after ShareNow obtained a \$1.4 million arbitration award, and according to Turner, it was made because the value of Xen technology had eroded with time and there was no other way to clear continuing litigation.

Xen technology was not integrated into petitioner’s portfolio, and petitioner received nothing from its investment in Xen Inc. Petitioner’s plan to merge with eSeekers (UK) was abandoned, and petitioner and eSeekers (UK) remained independent of each other.

In May 2015, petitioner moved to quash service of process for lack of personal jurisdiction, relying on declarations by two of its directors, LeFeuvre and Turner. In opposition to the motion to quash, real parties used select portions of Turner’s deposition testimony from the bankruptcy examination to argue that Xen Inc. and eSeekers (CA) were petitioner’s alter egos. They also relied on a one-page declaration by real party Martin, the former chief operating officer of Xen Inc. and eSeekers (CA). According to Martin, petitioner had “exerted pervasive and continued control” over those entities through their common leadership, namely Turner and Robertson. Martin considered Robertson his “ultimate employer.” Martin claimed “Xen” was not an independent company, but a technology brand that petitioner was managing, and Xen Inc. was petitioner’s office in the United States. According to Martin, the American employees worked directly for petitioner and were issued stock options in that entity.³

At the hearing on the motion to quash, the court⁴ denied petitioner’s objections to real parties’ evidence and denied the motion “without prejudice to [petitioner] raising the issue down the road in a different context.” The court found real parties had “substantial evidence” from which an alter ego relationship could be inferred.⁵ It rejected petitioner’s

³ The employment contracts attached to the complaint indicate that the employees of Xen Inc. and eSeekers (CA) were granted options to buy shares in eSeekers (UK). In a settlement offer to Martin made along with the termination notice, Turner suggested that his options would be converted into shares in petitioner.

⁴ At petitioner’s request, we take notice of the fact that Judge Kussman, who ruled on the motion to quash, has since retired, and the case has been reassigned.

⁵ The court stated: “I think there’s evidence on both sides. I think it’s a little bit anomalous because . . . , at trial, it could be clear that the plaintiff would have to prove . . . [by] a preponderance of the evidence that all the criteria for alter ego exist[.]. [¶] But here we are not at trial, but it is still the plaintiffs’ burden. . . . They have to do more . . . than just . . . have a triable issue of fact. They have to prove it. [¶] But it seems to me they have substantial evidence of it, whether I use that term, because one can have substantial evidence, but may not be able to—let me put it this way: have substantial evidence, but not necessarily prove something by a preponderance of the evidence. Substantial evidence may support a finding, but in looking at all the evidence, it may not

characterization of itself as “just a lender,” noting: “They are sharing officers. They’ve got some control over what happens. They were involved in the operation.”

Nevertheless, it declined to read Turner’s deposition testimony as stating unequivocally that the companies were “one entity.” The court was of the view that a “specific finding” of alter ego need not be made until trial or post judgment, and that finding the evidence sufficient to support jurisdiction on an alter ego theory did not prevent petitioner from defending against the merits of the claim of alter ego liability.⁶

After dismissing several defendants, the court stayed the case against defendant Interest Labs, Inc. because of a pending arbitration proceeding, and it stayed the case against petitioner on the assumption that it could not proceed on a theory that petitioner was an alter ego of Xen Inc. while the latter was subject to a bankruptcy stay

DISCUSSION

The established rule in California is that “[w]hen a nonresident defendant challenges personal jurisdiction, the plaintiff must prove, by a preponderance of the evidence, the factual basis justifying the exercise of jurisdiction. [Citation.] . . . [¶] When the jurisdictional facts are not in dispute, personal jurisdiction is a legal question for de novo review. [Citation.] If the jurisdictional facts are conflicting, we review the lower court’s factual determinations for substantial evidence, but still review its legal conclusions de novo. [Citation.]” (*BBA Aviation PLC v. Superior Court* (2010) 190 Cal.App.4th 421, 428–429 [*BBA Aviation*].)

be a preponderance of the evidence, but I think there’s substantial evidence from which one could infer that they are alter ego.”

⁶ Petitioner’s counsel argued that if the court denied the motion to quash, it would not be making a finding of alter ego; rather, it would be making a finding that real parties “provided sufficient evidence” for the court to conclude that they “met a preponderance of the evidence standard for purposes of this motion so that the case moves forward.” The court responded: “I want to make that clear, because I think that it is a little different than if we are at trial or even post judgment and it has to be a specific finding. I think the issue is here there’s sufficient evidence to allow the plaintiff to proceed on an alter ego theory for purposes of this motion, which is really a matter of jurisdiction”

Personal jurisdiction over a nonresident defendant exists when “the defendant has minimum contacts with the state such that asserting jurisdiction does not violate traditional notions of fair play and substantial justice. [Citation]” (*BBA Aviation, supra*, 190 Cal.App.4th at p. 429.) Jurisdiction may be general or specific. (*Ibid.*) General jurisdiction requires substantial, continuous, and systematic contacts with the state, and in the case of a foreign corporation may be established on alter ego or agency theories. (*Ibid.*) Specific jurisdiction, in turn, depends on “the quality and nature of the defendant’s forum contacts in relation to the particular cause of action alleged. [Citation.]” (*Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 978.) There is some disagreement whether agency and alter ego principles can be used to establish specific jurisdiction. (See *id.* at p. 983.) Real parties do not distinguish between general and specific jurisdiction.

I

Petitioner argues the trial court used an incorrect “substantial” or “sufficient” evidence standard in denying the motion to quash. Real parties’ suggestion that substantial evidence is the proper standard confuses the standard of review of factual findings on appeal with the standard for initial factfinding in the trial court. (See *BBA Aviation, supra*, 190 Cal.App.4th at p. 428.)

The problem in this case is that the alter ego theory on which real parties relied in opposing the motion to quash is enmeshed with the merits of the claim of alter ego liability in their complaint. Generally, a motion to quash challenges only the lack of personal jurisdiction and does not place the merits of the complaint at issue; nor does it waive the defendant’s right to defend on the merits. (See *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 540 (*Sonora*); *Kroopf v. Guffey* (1986) 183 Cal.App.3d 1351, 1360; *Nelson v. Horvath* (1970) 4 Cal.App.3d 1, 4–5.) The trial court’s hesitation to make a finding of alter ego at the jurisdictional stage is understandable in light of the general prohibition against ““a judicial investigation of the merits”” at that stage. (*School Dist. of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1132.) However, in declining to make a “specific finding” of alter ego, the court may

have departed from the established preponderance of the evidence standard of proof on a motion to quash in California.

Petitioner suggests that the court used a standard similar to that used to rule on summary judgment motions, but the court acknowledged that real parties needed to do more than raise a triable issue of fact. It found instead that there was substantial evidence from which alter ego could be inferred. Notably, a lower substantial evidence standard is used by federal courts on a motion to dismiss for lack of personal jurisdiction where disputed jurisdictional facts are intertwined with the merits of a case. In that situation, the plaintiff is required to make a prima facie case of the jurisdictional facts on documentary evidence and to prove the merits at trial by preponderance of evidence. (See *Sonora*, *supra*, 83 Cal.App.4th at p. 540, fn. 7 [noting different standard and procedure in federal courts], citing *Data Disc, Inc. v. Systems Technology Assoc., Inc.* (9th Cir. 1977) 557 F.2d 1280, 1285; see, e.g., *ADO Finance, AG v. McDonnell Douglas Corp.* (C.D. Cal. 1996) 931 F.Supp. 711, 717 [prima facie showing of alter ego liability based on substantial evidence].)

Although it did not overtly say so, the court here may have adopted a standard similar to that used by the federal courts. The court acknowledged that substantial evidence may be less than preponderance of the evidence, then used the term “substantial evidence” without clearly finding the evidence preponderated. The court modified the formulation offered by petitioner’s counsel—that in denying the motion, the court would be finding “sufficient evidence” to conclude that real parties “met a preponderance of the evidence standard for purposes of this motion so the case moves forward”—to state that there was “sufficient evidence to allow [real parties] to proceed on an alter ego theory” for purposes of jurisdiction, under an unidentified standard. Normally, in order “[t]o prevail, the party bearing the burden of proof on the issue must present evidence sufficient to establish in the mind of the trier of fact or the court a requisite degree of belief (commonly proof by a preponderance of the evidence).” (*Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1667.) Here, it is unclear whether the court’s

finding on the sufficiency of the evidence was made under a preponderance of the evidence or a substantial evidence standard.

In *Wollersheim v. Church of Scientology* (1999) 69 Cal.App.4th 1012, 1017 (*Wollersheim*), the trial court applied a substantial evidence standard in ruling on a post-trial motion to join an alter ego judgment debtor. The appellate court remanded the case for redetermination of the motion under a preponderance of the evidence standard. The court reasoned that since the proper standard was contested in the trial court, and that court expressly chose to apply an incorrect standard after argument, it would be inappropriate to assume that the court made findings by preponderance of the evidence. (*Ibid.*)

The ruling in this case is more ambiguous than that in *Wollersheim*. As we explained, it is possible that the court made findings under a lower standard of proof. However, it also is possible that in stating that a party may “[h]ave substantial evidence, but not necessarily prove something by a preponderance of the evidence,” and that “[s]ubstantial evidence may support a finding, but in looking at all the evidence, it may not be a preponderance of the evidence,” the court meant that while the evidence before it might be sufficient to prove the jurisdictional facts by preponderance of the evidence, it might be overcome by additional evidence adduced later in the case and, therefore, might not be sufficient to prove alter ego liability by preponderance of the evidence at a trial on the merits. To the extent the court’s statements are ambiguous, they do not support setting aside the order. (See *Piscitelli v. Salesian Society* (2008) 166 Cal.App.4th 1, 7, fn. 9 [ambiguous statements by trial court insufficient to rebut presumption that order is correct].)

II

Alternatively, petitioner argues the order is not supported by substantial evidence. Initially, petitioner argues the court abused its discretion in summarily overruling its objections to the Martin declaration, and the declaration is insufficient because it primarily consists of ultimate facts and legal conclusions. We agree. A plaintiff can meet its burden in opposing a motion to quash “only by the presentation of competent

evidence in affidavits or declarations and authenticated documentary evidence.

[Citation.] Affidavits or declarations consisting primarily of vague assertions of ultimate fact rather than specific evidentiary facts are not sufficient. [Citation.]” (*Paneno v. Centres For Academic Programmes Abroad Ltd.* (2004) 118 Cal.App.4th 1447, 1454; see also *Greshko v. County of Los Angeles* (1987) 194 Cal.App.3d 822, 834 [“affidavits or declarations setting forth only conclusions, opinions or ultimate facts” are insufficient].)

Ultimate facts are essential elements of a claim or defense. (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 689.) They “are the logical conclusions deduced from” evidentiary facts. (*Rhode v. Bartholomew* (1949) 94 Cal.App.2d 272, 279; see also *Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513 [ultimate facts are “core” facts, distinguishable from evidentiary facts and bare conclusions of law].) Application of the alter ego doctrine depends on a non-exclusive combination of factors, such as “the commingling of funds and assets of the two entities, identical equitable ownership in the two entities, use of the same offices and employees, disregard of corporate formalities, identical directors and officers, and use of one as a mere shell or conduit for the affairs of the other. [Citation.]” (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1108–1109.) Factors necessary to finding of alter ego are considered ultimate facts. (See *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 235 [domination and control, unity of interest, use of corporate alter ego as “a mere shell and conduit,” inadequate capitalization, and failure to abide by the formalities of corporate existence are ultimate facts of alter ego claim].)

Martin’s declaration abounds in bare legal conclusions to which objections should have been sustained: that Xen Inc. and eSeekers (CA) are alter-egos of petitioner and that petitioner controlled them pervasively and continuously; that Xen Inc. was merely an office of petitioner’s and a conduit for payment of its employees in the United States; that American employees worked directly for petitioner and were issued stock in it; and that Martin “always regarded” Robertson as his “ultimate employer.” Most of these conclusions are illogical and incorrect. Martin ignores the facts that Xen Inc. and

eSeekers (CA) were established as subsidiaries of eSeekers (UK), and that petitioner did not come into existence until a year after eSeekers (CA) had gone out of business and Xen Inc. had been formed. Essentially, Martin's declaration asserts that the California entities were set up as alter egos of a non-existing company. It is insufficient to carry real parties' burden.

Petitioner argues that the select excerpts from Turner's deposition testimony on which real parties rely also are insufficient to establish alter ego as a jurisdictional fact. Petitioner does not dispute the truth of Turner's statements, only their interpretation and legal significance, which are subject to de novo review. (*Dorel Industries, Inc. v. Superior Court* (2005) 134 Cal.App.4th 1267, 1273 ["we review independently the trial court's conclusions as to the legal significance of the facts"].)

Real parties claim Turner "unequivocally" testified that petitioner and the California corporations are "one." The trial court concluded that Turner's truncated statement was ambiguous. We agree. Read in context, Turner's response explains how the decision to terminate the employees of Xen Inc. was made. Turner stated that the decision originated in discussions between the respective boards of directors of eSeekers (UK) and petitioner. According to Turner, petitioner discontinued the line of credit to Xen Inc. because eSeekers (UK) could not "find a way of stopping the spin until we had an investor in place that could refinance what was going on." This portion of Turner's explanation is consistent with petitioner acting in its capacity as a lender.

The notice of termination to Xen Inc.'s employees indicates petitioner made the decision not only to discontinue the line of credit, but also to terminate their employment contracts as the parent of eSeekers (UK) and "ultimate" owner of Xen Inc. While Turner purported to give the notice of termination on behalf of petitioner, he acknowledged acting in his individual capacity by stating that the wording was his and the notice was, "for the most part, is personal." In the same notice, he also made representations on behalf of Xen Inc.—that the company was seeking to make "voluntary arrangements" with its employees, without attributing that decision to petitioner.

Neither the fact of Turner's interlocking positions with Xen Inc. and petitioner, nor his use of petitioner's letterhead is dispositive. The use of an entity's letterhead does not trump the substance of the communication. (See, e.g., *Sonora, supra*, 83 Cal.App.4th at p. 548 [use of letterhead of parent company by its employees to order transfer of money between accounts of subsidiary company did not prove commingling of funds].) The mere interlocking of directors and officers "is insufficient to rebut the presumption that each common officer or director wore the appropriate 'hat' when making corporate and operational decisions for the respective entities. [Citations.]" (*Id.* at p. 549.) The substance of Turner's notice suggests he was notifying Xen Inc. employees of their termination on behalf of petitioner, offering voluntary settlements on behalf of Xen Inc., and essentially acknowledging that neither entity had authorized or approved the actual content of the notice. It is too unclear to prove anything.

Turner explained that his wording was inartfully intended to reflect petitioner's expectation of eventually acquiring Xen Inc. His characterization of petitioner as Xen Inc.'s "ultimate" owner is consistent with that explanation. The memorandum of understanding gave petitioner the authority to be involved in the management of eSeekers (UK)'s subsidiary, as well as in any decision to dispose of it. While this authority exceeded petitioner's powers as lender, treating petitioner as a de facto owner or parent of Xen Inc. does not automatically subject it to personal jurisdiction in California. (See *Sonora, supra*, 83 Cal.App.4th at p. 540 ["neither ownership nor control of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business"].)

There is no evidence that petitioner exercised the requisite "day-to-day control" over Xen Inc.'s operations to subject it to personal jurisdiction. (See *Sonora, supra*, 83 Cal.App.4th at p. 541.) According to Turner, eSeekers (UK) "was the ultimate decision maker with respect to business decisions of Xen Inc.," and Robertson, a shareholder and director of eSeekers (UK), as well as a director of Xen Inc. and petitioner, was the person to whom Martin reported. There is no evidence that Robertson ever managed Xen Inc. on behalf of petitioner. Real parties' assumption that Robertson was the individual

behind petitioner and Xen Inc. is not supported by Turner's testimony, which suggests the involvement of many other individuals and entities, whose exact relationship real parties have not addressed.⁷

Nor does the fact that Xen Inc. developed Xen technology in which petitioner had an interest negate Xen Inc.'s independent corporate existence. There is no evidence that petitioner was a technology development company, of which Xen Inc. was just an office, or that Xen Inc. engaged in operations petitioner could perform itself. (See *Sonora*, *supra*, 83 Cal.App.4th at p. 543 [representative services theory of agency does not apply to holding companies].) Real parties rely on a portion of Turner's deposition discussing a power point presentation made in February 2010, before the formation of both Xen Inc. and petitioner. The presentation referred to "Xen Universal" and "Xen's Federated Network," and Turner testified that Xen "in this context is a brand. It's not a company."⁸ Turner's testimony does not reasonably support an inference that Xen Inc. was set up as petitioner's office in the United States.

While petitioner may have been involved in the decision to end Xen Inc.'s operations, a parent is not "liable for the subsidiary's debts, unless the parent attempts to liquidate the subsidiary for the purpose of avoiding its liabilities." (*Wady v. Provident Life and Accident Ins. Co. of America* (C.D. Cal. 2002) 216 F.Supp.2d 1060, 1069–1070.) Similarly, "[t]he parent is not 'exposed to liability for the obligations of [the subsidiary] when [the parent] contributes funds to [the subsidiary] for the purpose of assisting [the subsidiary] in meeting its financial obligations and not for the purpose of perpetrating a fraud.' [Citation.]" (*Sonora*, *supra*, 83 Cal.App.4th at p. 539.) Piercing the corporate

⁷ To give one example, Turner testified that an individual by the name of Atul Bali was the main strategist behind Xen technology. He advised eSeekers (UK) on how to "create a brand and align people around it." At one point, Bali was a director of Xen Inc. Turner also testified that Bali founded petitioner and brought LeFeuvre "on to build it out with him."

⁸ Although Turner initially speculated "from recollection" that petitioner was in existence at the time as Xen Limited, he eventually concluded that "Xen," as used in the presentation, was not a company name.

veil requires that there be “an inequitable result if the acts in question are treated as those of the [domestic] corporation alone.” (*Id.* at p. 538.)

Real parties suggest that petitioner should not be “allowed to create mere sham California entities, denuded of any assets and thrown into bankruptcy, as a means of cheating California employees of their hard-won wages and severance.” As we explained, the record does not support the claim that petitioner created the California entities; nor is there evidence that the decision to terminate operations was made for a fraudulent purpose or that Xen Inc. was intentionally undercapitalized. Turner’s notice makes clear that the company could not meet its obligations at the time of termination. The undisputed evidence before us is that petitioner invested over \$9 million into Xen Inc., but the company failed to generate revenue. LeFeuvre’s declaration states litigation against eSeekers (UK), which began after the memorandum of understanding was entered into, drained petitioner’s resources. That is consistent with Turner’s examination testimony pertaining to the lawsuit and claim in bankruptcy by eSeekers (CA)’s licensee ShareNow. The record does not make clear the precise nature of the lawsuit or the reason for the financial drain it created. It is clear, however, that the funds petitioner loaned to Xen Inc. were raised through equity investments in petitioner, and that, at some point, finding investors willing to invest in the Xen technology portfolio became difficult.

On this record, we cannot conclude it would be inequitable or unjust to honor petitioner’s separate existence. *Alberto v. Diversified Group* (5th Cir. 1995) 55 F.3d 201 is instructive. There, the new owner of a struggling company infused more than \$4 million into it in a failed attempt to save the company from bankruptcy. The court concluded that “[i]t would indeed be an ironic injustice to hold [the owner] liable for [the subsidiary’s] debts merely because [the owner’s] substantial funding efforts to save [the subsidiary] from its impending bankruptcy were unavailing.” (*Id.* at p. 207.) “The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or

collecting a debt does not satisfy this standard. [Citation.]” (*Sonora, supra*, 83 Cal.App.4th at p. 539.)

DISPOSITION

The petition is granted and a peremptory writ of mandate shall issue directing respondent superior court to vacate its order denying petitioner’s motion to quash service of the summons and to enter an order granting the motion. Costs in this original proceeding are awarded to petitioner.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.